

Thereafter, a dispute arose regarding whether the temporary total disability compensation check was timely paid. At the hearing to consider claimant's request for sanctions, interest and attorney fees for respondent's failure to timely pay the temporary total disability compensation, the Administrative Law Judge placed the matter under advisement, finding as follows:

But from reading the notice of appeal to the Board of the decision of July 20, 1999, it appears that the compensability of the injury (which was actually decided on March 8, 1999) is also put in issue. Possible this feature could be reversed by the Board of Appeals. Therefore, it would be premature to award penalties for payments that may not have been required, or until the Division record is returned from the Board of Appeals for close review, and further consideration of just when was it apparent to respondent that temporary total disability would be due, and whether it should have been stopped under the circumstances.

Therefore, this matter will remain under advisement until further developments.

The Appeals Board, in considering the decision of the Administrative Law Judge to place this matter under advisement, must first decide whether it has jurisdiction to review the order issued by the Administrative Law Judge on September 8, 1999.

This appeal was not brought pursuant to the preliminary hearing statute K.S.A. 1998 Supp. 44-534a which limits Appeals Board review of preliminary hearing orders to the jurisdictional issues listed in that statute. This appeal appears to have been brought pursuant to K.S.A. 1998 Supp. 44-551(b)(1). Review by the Appeals Board was previously granted for "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge." Effective July 1, 1997, the statute was amended to read "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge"

In reviewing the decision of the Administrative Law Judge, the Appeals Board finds that this is not a final order, award, modification of award or preliminary award under K.S.A. 1998 Supp. 44-534a, but is, instead, an interlocutory decision made by the Administrative Law Judge during the litigation of a workers compensation case. In particular, it is a case of an administrative law judge managing his docket, which is well within the administrative law judge's jurisdiction and authority. The Appeals Board lacks the jurisdiction to review this order until such time as it is contained in a final order or award.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order of Administrative Law Judge Robert H. Foerschler dated September 8, 1999, remains in full force and effect, and the appeal of the claimant in this matter is dismissed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
D'Ambra M. Howard, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director